IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23572 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITKUMAR BANSILAL TRIVEDI THRO' P.O.A. - Petitioner(s)
Versus
K T SETHI - Respondent(s)

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Appearance :
MR CB DASTOOR for Petitioner(s) : 1,
MR HR PRAJAPATI for Respondent(s) : 1,
MR MR PRAJAPATI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2007

ORAL JUDGMENT

1. Though called out twice, no one was present for the petitioner. I have however, perused the material on record. I find that in the present

petition, the petitioner has challenged an order dated 19th October, 2000 passed by the learned Judge of Small Causes Court in HRP Suit no.1633/1992.

2. The petitioner is the original plaintiff who had filed the above-mentioned suit seeking recovery of the possession of the suit premises on the ground of unauthorised sub-tenancy thereof by the original tenant. The petitioner had filed an application exh.83 seeking admittance of photo copy of a document which copy was produced at mark 29/3. The case of the petitioner original plaintiff was that the petitioner had given an notice to the defendants under Order 11 Rule 18 of Civil Procedure Code calling upon them to produce the lease agreement. Despite such notice, defendants had not produced such a document. The plaintiff had therefore, by giving said application exh.83 prayed that the photo copy of the lease agreement produced at mark 29/3 be admitted in evidence and be given exhibit number.

3. It was this application which learned trial Judge rejected by his impugned order dated 19th October, 2000. In the impugned order, it was observed that the copy of the document was produced by the plaintiff's witness from telecom department. This witness had however, never identified the signature of the author of the

department. The plaintiff also had not identified the signature of the executor of the document. Learned Judge was therefore, of the opinion that the document produced along with list at mark 29/3 is not proved as per the requirement of the Evidence Act and same therefore, cannot be accepted. The learned Judge was of the opinion that the case would not fall under Section 65 of the Indian Evidence Act.

4. I do not find that the learned Judge committed any jurisdictional error. It is true that under certain circumstances as provided in Section 65 of the Indian Evidence Act, secondary evidence relating to document can be given. Learned Judge recorded that neither the witness of the plaintiff nor the plaintiff himself has identified the signature of the author or the executor of the document. Learned Judge was perfectly justified in refusing to exhibit the document which was not proved before the Court.

5. Under the circumstances, I find no merits in the petition. The petition is dismissed and disposed of accordingly. Rule is discharged. Interim relief is vacated. No order as to costs.

(Akil Kureshi,J.)

(raghu)